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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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FULBRIGHT & JAWORSKI, LLP				
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SUITE 5100				
HOUSTON, TX 77010-3095				
EXAMINER				
PARSLEY, DAVID J				
ART UNIT		PAPER NUMBER		
3643				
NOTIFICATION DATE		DELIVERY MODE		
10/22/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/583,565

Applicant(s)

KORTE ET AL.

Examiner

DAVID J. PARSLEY

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Detailed Action

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8-13-09 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-4 and 6-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 16 and 20 recite the limitation "the bottom wall" in line 17 of claim 1, in line 19 of claim 16 and in lines 19-20 of claim 20. There is insufficient antecedent basis for this limitation in these claims.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6-16 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 2,266,043 to Hutchins in view of U.S. Patent No. 2,398,921 to Cook.

Referring to claims 1 and 16, Hutchins discloses a storage platform, for storing, the storage platform comprising, an adjustable overflow for insertion into a tub-like container comprising, 1, having a base - at item 6 in combination with the flange at the top of tube - 11 as seen in figures 1-2, with a discharge aperture - see figures 1-5, and a cylindrical tube portion - at 5, with an axial passageway communicating with the discharge aperture - see figures 1-5, wherein a tubular adjusting member - at 2, is rotatably mounted on or in the tube portion - see figures -5, the tube portion being provided with a first adjustment opening - at 7, and the adjusting member being provided with a second adjustment opening - at 3, the adjustment openings being arranged such that in a first turning position of the adjusting member relative to the tube portion the first and second adjustment openings overlap at least partially and define a first overflow level - see figures 1-5, and in a second turning position of the adjusting members, the first and the second adjustment openings do not overlap and close the overflow - see figures 1-5, the overflow for defining a desired level of liquid - see figures 1-5. Hutchins further discloses the adjusting member - at 2, is engageable with the tube portion - at 5, in an axial

direction – see figures 1-5, the bottom wall – the bottom wall of the tub – at 10, adjacent the aperture – see figures 1-2, is received between a bearing surface of the base – the flange attached at the top of tube – 11, and the adjusting member – at 2 – see figures 1-2, and the overflow being fixed to the bottom wall – see at 6,11,10 in figure 2. Hutchins does not disclose two or more additional adjustment openings, the additional adjustment openings being arranged so as to be staggered in the circumferential and axial directions and the first and at least one of the additional openings overlap at least partially to define different overflow levels. Cook does disclose two or more additional adjustment openings – at 31, the additional adjustment openings being arranged so as to be staggered in the circumferential and axial directions – see figures 1-2, and the first – at 29, and at least one of the additional openings – at 31, overlap at least partially to define different overflow levels – see figures 1-3, page 1 column 2 lines 35-55 and page 2 column 1 lines 1-11. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Hutchins and add the at least two additional openings of Cook, so as to allow for the flow of liquid through the device to be controlled.

Referring to claim 2, Hutchins as modified by Cook further discloses the tube portion and the adjusting member are open at an end facing away from the base thereby defining a maximum overflow level – see figures 1-5 of Hutchins.

Referring to claim 3, Hutchins as modified by Cook further discloses the adjustment openings are substantially rectangular – see figures 1-5 of Hutchins, a lower edge in each case facing the base and defining an overflow level – see figures 1-5 of Hutchins.

Referring to claim 4, Hutchins as modified by Cook further discloses the tube portion has a first adjustment opening running in the axial direction, and extending from the base to an end of the tube portion distal from the base - see figures 1-5 of Hutchins.

Referring to claim 6, Hutchins as modified by Cook further discloses stop means - at 8, 5', provided for locking different relative turning positions between the adjusting member and the base - see figures 1-5 of Hutchins.

Referring to claim 7, Hutchins as modified by Cook further discloses the base has a flat bearing surface adjacent to the tube portion and running radially - see figures 1-5 of Hutchins.

Referring to claim 8, Hutchins as modified by Cook further discloses the base has two stops to limit a turning angle - see figures 1-5 of Hutchins.

Referring to claim 9, Hutchins as modified by Cook further discloses the discharge aperture is aligned transversely to the cylindrical tube - see figures 1-5 of Hutchins.

Referring to claim 10, Hutchins as modified by Cook further discloses the overflow consists entirely or partially of a material - see figures 1-5 of Hutchins, that can become water-permeable after it has been wet for a certain time - see page 1 column 1 lines 50-55 and page 1 column 2 lines 1-12 of Hutchins.

Referring to claim 11, Hutchins as modified by Cook further discloses a further discharge aperture - at 4 or the top of 2, which is arranged so as to be staggered in the circumferential direction and in particular is disposed opposite the discharge aperture - see figures 1-5 of Hutchins.

Referring to claim 12, Hutchins as modified by Cook further discloses an inspection opening is disposed in the region of the base in an extension of the passageway and communicating therewith – see figures 1-5 Hutchins.

Referring to claim 13, Hutchins as modified by Cook further discloses the inspection opening is sealed with a removable cap - see at 11,12 in figure 2 of Hutchins.

Referring to claim 14, Hutchins as modified by Cook further discloses the base is provided in the region of the passageway with a means for connecting a drainage hose - see at 11,12 in figure 2 of Hutchins.

Referring to claim 15, Hutchins as modified by Cook further discloses at least one adjustment opening and/or the open end of the adjusting member is/are designed in the form of a grating - see at 12 in figure 2 of Hutchins.

Referring to claim 21, Hutchins as modified by Cook further discloses each of the additional adjustment openings – at 31 of Cook, is smaller than the first adjustment opening - at 29 - see figures 1-3 of Cook where the openings - at 31 have a smaller depth in that they are formed in material of smaller thickness than that of the openings - at 29. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Hutchins and add the at least two additional openings of Cook, so as to allow for the flow of liquid through the device to be controlled.

Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hutchins as modified by Cook as applied to claim 16 above, and further in view of DE Patent No. 20213719.

Referring to claim 17, Hutchins as modified by Cook does not disclose the storage platform is rectangular and has two mounting members in each case on two parallel narrow sides

for hanging them in rack struts each mounting member having an engagement end portion ending freely. The German patent does disclose the storage platform is rectangular and has two mounting members in each case on two parallel narrow sides for hanging them in rack struts each mounting member having an engagement end portion ending freely – see figures 1-14. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Hutchins as modified by Cook and add the storage rack with mounting member and struts of the German patent, so as to allow for multiple plants to be supported and watered on the device.

Referring to claim 18, Hutchins as modified by Cook and the German patent further discloses the engagement end portions of the mounting members are in each case disposed in a corner region of the storage platform – see figures 1-14 of the German patent. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Hutchins as modified by Cook and the German patent and add the storage rack with mounting member and struts of the German patent, so as to allow for multiple plants to be supported and watered on the device.

Referring to claim 19, Hutchins as modified by Cook and the German patent further discloses an outlet member is disposed on the storage platform - see figures 1-5 of Hutchins, which becomes water permeable after it has been wet for a certain time - see page 1 column 1 lines 50-55 and page 1 column 2 lines 1-15 of Hutchins.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hutchins in view of Cook and further in view of the German patent.

Referring to claim 20, Hutchins discloses a watering device, having a storage platform, for storing, the storage platform comprising, an adjustable overflow for insertion into a tub-like container comprising, 1, having a base - at item 6 in combination with the flange at the top of

tube – 11 as seen in figures 1-2, with a discharge aperture - see figures 1-5, and a cylindrical tube portion - at 5, with an axial passageway communicating with the discharge aperture - see figures 1-5, wherein a tubular adjusting member – at 2, is rotatably mounted on or in the tube portion – see figures –5, the tube portion being provided with a first adjustment opening – at 7, and the adjusting member being provided with a second adjustment opening – at 3, the adjustment openings being arranged such that in a first turning position of the adjusting member relative to the tube portion the first and second adjustment openings overlap at least partially and define a first overflow level - see figures 1-5, and in a second turning position of the adjusting members, the first and the second adjustment openings do not overlap and close the overflow - see figures 1-5, the overflow for defining a desired level of liquid - see figures 1-5. Hutchins further discloses the adjusting member – at 2, is engageable with the tube portion – at 5, in an axial direction – see figures 1-5, the bottom wall – the bottom wall of the tub – at 10, adjacent the aperture - see figures 1-2, is received between a bearing surface of the base - the flange attached at the top of tube - 11, and the adjusting member - at 2 - see figures 1-2, and the overflow being fixed to the bottom wall - see at 6,11,10 in figure 2. Hutchins does not disclose at least two storage platforms arranged in such a way that any liquid draining away via the overflow of each storage platform flows into a storage platform below and adjacent to it. The German patent does disclose at least two storage platforms arranged in such a way that any liquid draining away via the overflow of each storage platform flows into a storage platform below and adjacent to it – see figures 1-14. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Hutchins and add the multiple storage platforms and liquid flowing between the storage platforms of the German patent, so as to allow for multiple plants to be supported and

watered on the device. Hutchins does not disclose two or more additional adjustment openings, the additional adjustment openings being arranged so as to be staggered in the circumferential and axial directions and the first and at least one of the additional openings overlap at least partially to define different overflow levels. Cook does disclose two or more additional adjustment openings – at 31, the additional adjustment openings being arranged so as to be staggered in the circumferential and axial directions – see figures 1-2, and the first – at 29, and at least one of the additional openings – at 31, overlap at least partially to define different overflow levels – see figures 1-3, page 1 column 2 lines 35-55 and page 2 column 1 lines 1-11. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Hutchins and add the at least two additional openings of Cook, so as to allow for the flow of liquid through the device to be controlled.

Response to Arguments

4. Regarding claims 1-4 and 6-21, the Hutchins reference US 2266043 discloses the newly added claim limitations of the adjustment member – at 2, being engageable with the tube portion – at 5 of the base in an axial direction. As seen in figures 1-5 of Hutchins, the adjustment member – at 2 is a separate component from the tube – at 5 and is either inserted in the tube - at 5 as seen in figure 3 or on the tube - at 5 as seen in figure 5. The adjustment member when being inserted on or in the tube - at 5, is moved in a vertical axial direction aligned with the longitudinal axes of the adjustment member - at 2 and the tube portion – at 5 as seen in figures 1-5. Therefore, applicant's arguments are not persuasive.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID J. PARSLEY whose telephone number is (571)272-6890. The examiner can normally be reached on Monday-Friday from 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David J Parsley/
Primary Examiner, Art Unit 3643